

### **REMARKS**

Claims 1-20 are pending. Claims 1-20 are rejected.

Claims 1-6, 10-14, and 18-19 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-2, 4-6, 12-13, 15-17, 23-24, and 26-28 of co-pending Application No. 10/671,061.

Claims 18-20 are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter.

Claims 1, 2, 10, 11, and 18 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,976,107 to Limoges et al. ("Limoges").

Claims 3-5, 12-14, and 19 are rejected under 35 U.S.C. §103(a) as being unpatentable over Limoges in view of U.S. Patent No. 6,269,391 to Gillespie ("Gillespie").

Claims 6-9, 15-17, and 20 are rejected under 35 U.S.C. §103(a) as being unpatentable over Limoges and Gillespie and further in view of U.S. Patent No. 6,517,587 to Satyavolu et al. (hereinafter "Satyavolu").

With regard to the provisional rejection of claims 1-6, 10-14, and 18-19 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-2, 4-6, 12-13, 15-17, 23-24, and 26-28 of co-pending Application No. 10/671,061, Applicants respectfully request that any requirement of a response to the rejection be held in abeyance until the issuance of a notice of allowable subject matter.

Regarding the rejection of Claims 18-20 under 35 U.S.C §101, Examiner has stated that these claims recite an apparatus and accordingly, the system would reasonably be interpreted by one of ordinary skill in the art as software, per se, failing to be tangibly embodied or include any recited hardware as part of the system. Examiner further states that software is an equivalent means of the apparatus as claimed. Claim 18 has been amended to include a processor and memory as part of the apparatus in order to overcome this U.S.C. §101 objection. Applicants respectfully submit, therefore, that this basis for rejecting claims 18-20 under 35 U.S.C. §101 has been overcome.

Independent Claims 1, 10, and 18 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Limoges. As a basis for this rejection, Examiner states that Limoges teaches a method for managing a resource in a data processing system. Examiner correctly states that Limoges differs from the claimed invention by teaching agents instead of threads and resources

instead of mutexes. However, Examiner takes the position that that it would be obvious to modify Limoges to include threads and mutexes. In support of this position, Examiner asserts that Limoges teaches using process identifiers for each agent and that it is old and well known in the art to utilize mutexes to secure resources. Applicants respectfully disagree.

While it is true that it is old and well known in the art to utilize mutexes to secure resources, skilled practitioners of the art would not consider an agent to be equivalent to a thread nor would they consider a resource to be equivalent to a mutex. Accordingly, it would not be obvious to those of skill in the art to modify limoges to include threads and mutexes.

In summary, Limoges teaches an adaptive spin latch system that includes a run queue, a spin latch module and a wait queue. The run queue stores agent index data correlated to agents that are in execution mode. The spin latch module puts predetermined agents into sleep mode for a period of time correlated to a number of agents awaiting access to a resource, not a mutex. The wait queue stores agent index data correlated to the agents in sleep mode that are awaiting access to a resource. The adaptive spin latch system also provides a method of regulating access to a resource by providing an agent that is capable of being set in both a run mode and a sleep mode, and determining the number of agents in sleep mode awaiting access to the resource.

More specifically, Limoges teaches an agent that attempts to lock the resource (that is, prevent other agents from accessing the locked resource). In the event that the resource is already being used by another agent, the lock attempt fails (col. 3, lines 29-30). In contrast, the present invention logically associates a mutex with a shared resource such that a thread that successfully locks the mutex is said to be the current owner of the mutex. The thread that possesses the mutex proceeds to access the shared resource until it unlocks the mutex. Until the mutex is unlocked, attempts by another thread to lock the mutex will fail. Examiner's suggestion to modify Limoges to include mutexes, as recited in independent claims 1, 10, and 18, would destroy the teachings of the preferred embodiment of Limoges and, therefore, a person of ordinary skill in the art would not seek such a modification.

Regarding the rejection of Claims 2 and 11, Limoges is entirely silent on the concept of a spinning thread count, since the number of spinning threads is not relevant to the teachings of Limoges.

For the reasons set forth hereinabove, Applicants respectfully submit that independent claims 1, 2, 10, 11, and 18 are not obvious under 35 U.S.C. §103(a) in view of Limoges and,

therefore, are allowable over the art of record. Applicants further submit that all pending dependent claims are allowable as being dependent on an allowable base claim.

### **CONCLUSION**

In view of the remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the examiner is requested to telephone the undersigned at 512-338-9100.

#### **CERTIFICATE OF TRANSMISSION**

I hereby certify that on December 1, 2008 this correspondence is being transmitted via the U.S. Patent & Trademark Office's electronic filing system.

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Respectfully submitted,

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